

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ***

4
5 MARY S. WEST,

6 Plaintiffs,

7 vs.

8 BOB FAULKNER, *et al.*,

9 Defendants.
10

2:15-cv-00665-GMN-VCF

**ORDER GRANTING ENLARGMENT OF
TIME TO SERVE**

11 Before the court are the Motion for Extension of Time to Serve 2nd Amended Complaint on
12 Defendant Holmes (ECF No. 40) and Motion for Service by Publication (ECF No. 45).

13 Plaintiff asks this court to permit service of the Summons and Complaint against Defendant James
14 E. Holmes by publication. *Id.* Plaintiff also seeks to extend the time in which to effectuate service under
15 Federal Rule of Civil Procedure 4(m). *Id.* No opposition has been filed to the motion for extension of
16 time to serve 2nd Amended Complaint (ECF No. 40).

17 **Service By Publication**

18 Pursuant to Fed. R. Civ. P. 4(e)(1), “an individual – other than a minor, an incompetent person, or
19 a person whose waiver had been filed – may be served in a judicial district of the United States by
20 following state law for serving a summons in an action brought in courts of general jurisdiction in the state
21 where the district court is located or where service is made.” Under Rule 4(e)(1) of the Nevada Rules of
22 Civil Procedure, “when the person on whom service is to be made resides out of the state, or has departed
23 from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid
24 the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge
25 thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action

1 exists against the defendant in respect to whom the service is to be made, and that the defendant is a
2 necessary or proper party to the action, such court or judge may grant an order that the service be made
3 by the publication of summons.”

4 Plaintiff asserts that the after diligent effort, she is unable to serve Holmes within the state of
5 Nevada. (ECF No. 45 at 8). In support of this assertion, Plaintiff provided the court with an affidavit of
6 attempted service. *Id.* The last known addresses for Holmes is 5370 E. Craig Rd., Unit 1079, Building
7 14, Las Vegas, Nevada 88115. *Id.* Service at this address was unsuccessful. *Id.*

8 The court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
9 service by publication of the Summons and Complaint on Holmes is warranted. Pursuant to Rule
10 4(e)(1)(iii), the publication must be made in a newspaper, published in the State of Nevada, for a period
11 of 4 weeks, and at least once a week during said time. Nev. R. Civ. P. 4(e)(1)(iii).

12 **Extension For Service**

13 Fed. R. Civ. P. 4(m) requires a defendant to be served within 90 days after the complaint is filed.
14 If “the plaintiff shows good cause for the failure [to serve a defendant within that time-frame], the court
15 must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

16 Plaintiff must effectuate service on Holmes by May 5, 2016. Fed. R. Civ. P. 4(m). Plaintiff asserts
17 that an additional 60 days is required to effect service by publication, and asks this court to extend the
18 4(m) deadline. *Id.*

19 Given that Plaintiff has demonstrated “good cause” for her failure to effectuate service and has
20 provided support for her request for an extension, the court will extend the 4(m) deadline until May 5,
21 2017. *See* Fed. R. Civ. P. 4(m).

22 Accordingly, and for good cause shown,

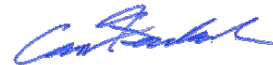
23 IT IS HEREBY ORDERED that Motion for Extension of Time to Serve 2nd Amended Complaint
24 on Defendant Holmes (ECF No. 40) and Motion for Service by Publication (ECF No. 45) are GRANTED.
25

1 IT IS FURTHER ORDERED that Plaintiff is permitted to serve Holmes by publication. A copy
2 of the Summons and Complaint must be mailed to Holmes at his last known address by certified U.S.
3 Mail, return receipt requested.

4 IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1)(i)
5 and (iii), the Summons in this action must be served by publication in a newspaper, published in the state
6 of Nevada, for a period of four weeks and at least once a week during that time.

7 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
8 including May 5, 2017.

9 DATED this 28th day of February, 2017.

10
11 

12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25